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7                   **UNITED STATES DISTRICT COURT**  
8                   EASTERN DISTRICT OF CALIFORNIA  
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10 JOSE ESCOBEDO,  
11                   Plaintiff,  
12                   v.  
13 MARIA GLORIBEL VIDES GUARDADO,  
et al.,  
14                   Defendants.

Case No. 1:23-cv-00329-SAB  
ORDER REQUIRING PLAINTIFF TO  
ADDRESS STIPULATION OF DISMISSAL  
AS TO NON-APPEARING DEFENDANT  
(ECF No. 23)

**THREE DAY DEADLINE**

16         On September 6, 2023, a stipulation was filed by the appearing Defendants, dismissing  
17 this action with prejudice and with each party to bear its own costs and fees. (ECF No. 23.) One  
18 Defendant, Maria Gloribel Vides Guardado Doing business as Mariscos El Patron Mexican  
19 Food, has not appeared in this action. The filed stipulation does not specifically state whether  
20 the claims against the non-appearing Defendant are to be dismissed with prejudice as well,  
21 however, the filing does indicate that the action is to be dismissed in its entirety with prejudice.

22         Under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, ‘a plaintiff has an  
23 absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a  
24 motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193  
25 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir.  
26 1997)). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) provides that a “plaintiff may dismiss an  
27 action without a court order by filing a stipulation of dismissal signed by all parties who have  
28 appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

1       The Court shall require Plaintiff to advise the Court as to whether Plaintiff intends to  
2 dismiss the claims against the non-appearing party with prejudice as well.

3       Accordingly, IT IS HEREBY ORDERED that, within **three (3) days** of entry of this  
4 order, Plaintiff shall submit a notice of dismissal or other filing advising the Court of whether  
5 Plaintiff intends to dismiss the claims against the non-appearing Defendant with or without  
6 prejudice.

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8 IT IS SO ORDERED.

9 Dated: September 7, 2023

  
UNITED STATES MAGISTRATE JUDGE

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